

REMARKS

Claims 1–26 are pending in the present application.

Claims 1 and 14 were amended herein to correct typographical errors.

Reconsideration of the claims is respectfully requested.

35 U.S.C. § 103 (Obviousness)

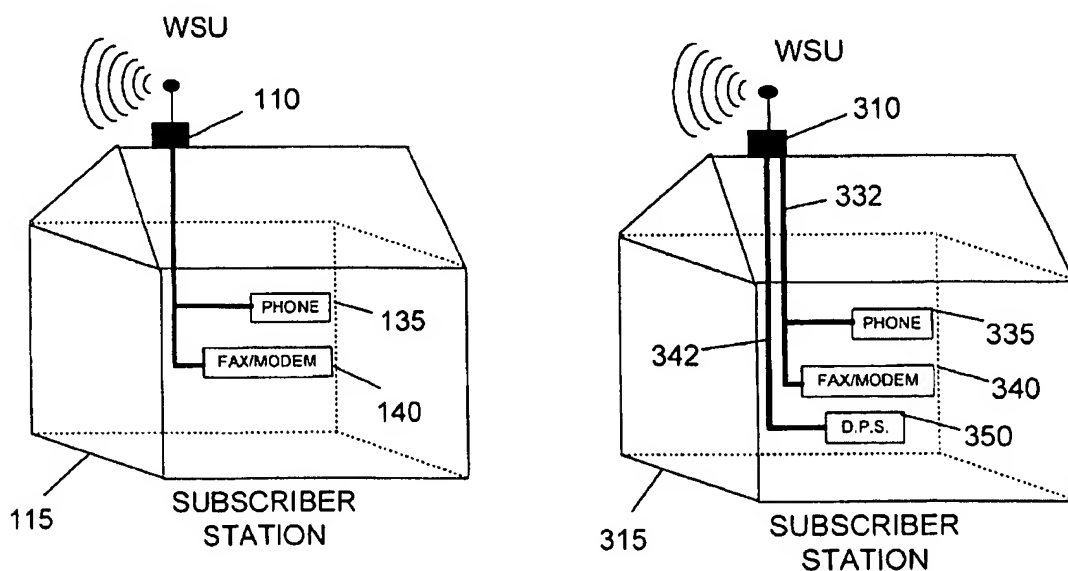
Claims 1–4, 9, 14–17 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,603,095 to *Uola* in view of U.S. Patent No. 6,792,286 to *Bharath et al.* Claims 5–8, 10–11, 18–21 and 23–24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Uola* in view of *Bharath et al* and further in view of U.S. Patent No. 5,490,252 to *Macera et al.* Claims 12–13 and 25–26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Uola* in view of *Bharath et al* and further in view of U.S. Patent No. 6,836,546 to *Willer*. These rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-133 (8th ed. rev. 3 August 2005). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.*

To establish a *prima facie* case of obviousness, three basic criteria must be met: First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference

teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

Independent claims 1 and 14 each recite a subscriber access device to a fixed wireless broadband network adapted for mounting on an exterior portion of subscriber premises. Such a feature is not suggested by the cited combination of references. As conceded in the Office Action, *Uola* does not teach that WLL subscriber terminal SE is located on an exterior portion of the subscriber premises. *Bharath et al* depicts, in Figures 1 and 3, a wireless subscriber unit (WSU) 110, 310 mounted on the roof of a subscriber station 115, 315:



Bharath et al, Figures 1 and 3. However, *Bharath et al* diagrammatically depicts the system described, depicts WSU 110, 310 by an iconic representation having a “black box” integral with an antenna, and contains no description regarding the location of the WSU 110, 310, suggesting that the content of the figures may have resulted from a “shortcut” in preparing the drawings rather than from an intent to suggest that the device was actually mounted on the roof of a subscribers station.

Regardless, to the extent that *Bharath et al* actually suggests mounting the WSU 110, 310 on the roof of a subscriber station 115, 315, no motivation for such mounting of other wireless local loop subscriber access devices is provided. As taught in the specification, inaccessibility of subscriber access devices to maintenance workers has been one obstacle to widespread deployment of broadband wireless access networks. *Bharath et al* contains no equivalent teaching.

The Office Action states:

It would have been obvious to one of ordinary skill in the art to modify Uola to mount the WLL network device on the exterior as taught by Bharath in order to allow for better reception at the subscriber antenna.

Paper No. 06172005, page 3. However, the iconic representation of WSU 110, 310 in *Bharath et al* does support the inference drawn in the Office Action that the antenna is integral with the transceiver portion of WSU 110, 310, rather than being connected by, for example, coaxial cable or RJ-11 to a transceiver mounted in an attic, near a power line access point, or at some other location in or on the subscriber station 115, 315. Moreover, even assuming that the antenna and transceiver are in fact integral for the WSU 110, 310 in *Bharath et al*, nothing in either *Uola* or *Bharath et al*

suggests that antenna reception is significantly improved by mounting the WSU 110, 310 on an exterior of the subscriber station rather than the interior (i.e., that wall penetration losses are non-negligible). Accordingly, the cited references do not support either the inferences drawn in the Office Action or the motivation proposed in the Office Action for combining the cited teachings within the references.

The Office Action further states:

As to claims 2, 3, 15, 16, note that Uola is silent as to whether the backup power supply is inside or outside. Official Notice is taken that it would be obvious to one of ordinary skill in the art to position the backup power supply in the optimum position for the particular subscriber location.

Paper No. 06172005, page 3. Pursuant to MPEP § 2144.03, Applicant respectfully traverses the assertion of official notice. The claims at issue recite mutually exclusive alternatives, for which the Office Action does not identify the asserted “optimum position.” Moreover, an assertion that it would be obvious to try a claim feature – i.e., that one might use either alternative depending on the particular circumstances – is insufficient to establish a *prima facie* case of obviousness.

Therefore, the rejection of claims 1–25 under 35 U.S.C. § 103 has been overcome.

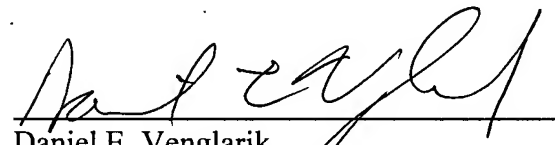
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *dvenglarik@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: 12-11-05


Daniel E. Venglarik
Registration No. 39,409

P.O. Drawer 800889
Dallas, Texas 75380
(972) 628-3621 (direct dial)
(972) 628-3600 (main number)
(972) 628-3616 (fax)
E-mail: *dvenglarik@davismunck.com*